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LOVE AND ARCHITECTURE: RACE, NATION, AND GENDER PERFORMANCES INSIDE AND OUTSIDE THE STATE

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In her contribution to this Cluster, *Of Desi, J. Lo and Color Matters: Law, Critical Race Theory and the Architecture of Race*, Imani Perry adopts a spatial metaphor for exploring the interconnections among race, sex, color, nation, and language, suggesting that we think of race as an “architecture.”² In her desire for a more complex language of subordination than the list of forbidden categories that antidiscrimination jurisprudence gives us, she joins many others within LatCrit who have reached for new ways to see race as one strand of power and identity among many.³ In this essay, I will use the metaphor of “performance” to describe the complicated interplay of power and identity. Each of the essays in this Cluster, I suggest, is concerned with some facet of identity performance within the power fields of gender, race, and nation. Perry calls our attention to how skin color, though typically subsumed by “race” in legal discourse, is a resource for performing identity that in fact complicates our understanding of racial subordination. Nancy Ehrenreich and Nicholas Espiritu are concerned with how states mobilize individual and collective race and gender performances as a way of inciting and legitimizing organized violence. Anita Tijerina Revilla and Marta Núñez Sarmiento describe attempts by two groups of Latinas to rewrite the scripts according to which gender, ethnicity, sexuality, and nation are performed by individuals. Revilla’s essay, finally, introduces a disturbing concept that potentially destabilizes both the metaphor of performance and the metaphor of architecture: “love.”

I.

“Performance” is a tricky word in a society that reveres “choice.” The term suggests a rational, conscious decision to take up a role or an act, and is apt to be misunderstood as a claim that people can wake up each day and decide from an infinite range of choices who they want to be. Some writers using the performance metaphor do indeed focus on the strategies individuals deliberately develop to be seen and treated in a certain way by others. An example is the work of Devon Carbado and Mitu Gulati, who describe “identity performance” this way:

In a nutshell, the theory of identity performance is that a person’s experiences with and vulnerability to discrimination are based not just on a status marker of difference (call this a person’s status identity) but also

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²Imani Perry, *Of Desi, J. Lo and Color Matters: Law, Critical Race Theory and the Architecture of Race*, 52 CLEVE. ST. L. REV. 139 (2005).

³See, e.g., Symposium, *Theorizing the Connections Among Systems of Subordination*, 71 UMKC L. REV. (Winter 2002) (including articles by LatCrit authors Elvia Arriola, Robert Chang and Jerome Culp, Sumi Cho, Frank Cooper, Nancy Ehrenreich, Darren Hutchinson, Peter Kwan, Sherene Razack, Frank Valdes, and Robert Westley).

on the choices that person makes about how to present her difference (call this a person's performance identity).⁴

Even this version of identity performance, however, acknowledges that people do not begin with a blank slate when attempting to influence how they are seen by others. Rather, identity performance always takes place under conditions of constraint. First (as Carbado and Gulati implicitly acknowledge with the words "status" and "difference"), structures of power and cultural ideologies sharply reduce the degrees of freedom one has in choosing roles. Cultural stereotypes relating to identity, which are strongly tied to forms of bodies, make the attempt to perform, for instance, white masculinity very difficult if one has a body publicly read as "black" and "female." Second, performance itself is not optional: Refusing to perform does not remove you from the stage.

Nevertheless, the word "performance" is useful as a way of crystallizing what theorists mean by the "social construction" of identity. Judith Butler's description of gender as a performance has become classic:

Gender ought not to be construed as a stable identity or locus of agency from which various acts follow; rather, gender is an identity tenuously constituted in time, instituted in an exterior space through a *stylized repetition of acts*. The effect of gender is produced through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and styles of various kinds constitute the illusion of an abiding gendered self.⁵

In this view, gender is not something that issues naturally from the biology of male and female; it is a story told by our culture, and therefore a story that can be altered and potentially subverted by the actions of individuals acting collectively, as well as one that can be acted out in various ways by the conscripted participants.

Another virtue of the performance metaphor is the way it makes us aware of individual and collective agency, even though that agency is exercised under constraint. The power of the constant and institutionalized repetition we call "ideology" to make a story seem not a story at all, to make gender seem purely a result of biology, for example, should not be discounted. Yet subversion is always possible. Even when subversion is neither the goal nor the result, the artful complexity of certain counter-hegemonic performances can startle us into noticing the complex architecture of hegemony B and awareness can lead to transformation.

II.

In *Of Desi, J. Lo and Color Matters: Law, Critical Race Theory and the Architecture of Race*, Imani Perry calls our attention to the racial identity performances undertaken by Desi Arnaz and Jennifer Lopez. These are celebrities marked as "Latino/a" who enjoy(ed) both star status and high-profile romantic relationships with white Americans. How is it that the specter of miscegenation did

⁴Devon Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 701 (2001).

⁵JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY 140 (1990).

not make their images controversial? Perry concludes that the answer is their light skin. Thanks to his light skin, she suggests, Desi Arnaz was “understood by the American public as a white colonial elite or at least as possibly white.”

J. Lo’s racial performances have been more complicated. As Perry notes, because of her participation in hip-hop culture she is potentially claimed by black and white communities as well as by the Puerto Rican community – which, like the Cuban community of which Arnaz was a part, is internally divided by the color line. Ultimately, Perry argues, Lopez’s light skin (which may have prompted the criticism of her use of the “n-word” in the song “I’m Real”) allowed her to “cross racial borders to become a white leading lady” – even while being defended by Ja Rule as a “nigga.”

Desi and J. Lo’s racial performances might be understood in Kenji Yoshino’s terms as a form of “covering.”⁶ Whereas “passing” is commonly understood as the attempt to deny a particular racial identity that would otherwise be imposed, covering is an identity performance that does not deny a stigmatized identity but attempts to make it palatable to others. Yoshino’s article offers the example of Lawrence Mungin, an ambitious African American attorney who in Yoshino’s view strove to “join a select group of individuals of African-American ancestry—including Tiger Woods, Colin Powell, and Arthur Ashe – who are seen ‘not as unblack but as not merely, not primarily, black.’”⁷ Perry’s essay suggests that being light-skinned is a resource for covering: one that enabled Arnaz to perform “Babalu,” a praise song to a Yoruba deity, and Lopez to perform in the black-identified genres of hip-hop and R&B, without fully suffering the stigma of racial “otherness.”

Are these complicated performances ultimately subversive or supportive of the racial status quo? Perry suggests that the images of Arnaz and Lopez entice their viewers into embracing them as (almost) white. The parenthetical “almost” hints at one conservative function of covering: to help Americans indulge themselves in the fantasy of their own nonracism. As the Benetton “United Colors” advertising campaign encouraged us to do by presenting skin color as a purely aesthetic phenomenon, when we consume the images of light-skinned people of color we can enjoy the spectacle of our own acceptance of these celebrities without being disturbed by the specter of political inequality and “differences” that might be more than skin-deep. Their images thus offer mass audiences the opportunity to perform racial inclusion by making palatable what racial inclusion means.

If racially ambiguous yet “covering” celebrities like Arnaz, Lopez, Mariah Carey, and “The Rock” offer the American public comfort and the ability to believe that we have gotten beyond race except as a cultural performance, the identity performances described by Nancy Ehrenreich and Nicholas Espiritu are considerably less cuddly. Their work suggests that government elites recruit citizens’ consent and participation (symbolic or real) in committing acts of extreme violence by engaging them in stories that put raced and gendered identities at stake: sometimes the individual identities of the citizenry, and sometimes the identities imputed to the state itself through raced and gendered fantasies of the nation.

Nancy Ehrenreich’s essay, *Disguising Empire: Racialized Masculinity and the ‘Civilizing’ of Iraq*, follows in the footsteps of Cynthia Enloe’s pioneering work on

⁶See generally Kenji Yoshino, *Covering*, 111 YALE L.J. 769 (2002).

⁷*Id.* at 884.

gender, race, and the military.⁸ Ehrenreich examines how national governments—in this case the government of the United States—use race and gender performances to enlist (I use the verb advisedly) citizens in the so-called “War on Terrorism.” Declaring war on something, of course, is a time-honored way of gaining political support for projects necessitating actual violence. Everyone understands that under conditions of war, the nation’s very existence is threatened and therefore any amount of violence can be excused in its defense. Metaphorical wars, therefore, can cause, heighten, and legitimate actual violence.

The project of getting individuals to support a war, moreover, is deeply gendered. As Ehrenreich observes, “War is . . . a paradigmatically male activity.” Whatever the deepest origins of the connection between men and war, modern Western masculine gender identity is easily coopted in the service of organized violence. The soldiers who fight our wars are traditionally predominantly male, and they are encouraged through military training to conflate the actions they take in defense of their country with personal performances of hypermasculinity. These performances may have both psychological and cultural elements.⁹ As a psychological matter, modern masculinity is so fragile that its destruction seems a constant possibility, which places many men in an existential situation of constant anxiety in which the commission of violence in the defense of personal integrity is an ever present possibility.¹⁰ As a cultural matter, in the nineteenth century an image of the “real man” that focused on physical strength and brutal violence emerged as an ideal, partially supplanting the older ideal of “manliness” as based in gentility, self-restraint, and respectability.¹¹

Meanwhile, another, more fantastic (literally) form of identity performance involves the image of the nation itself. The President of the United States recently invoked the masculinity of “primitive savagery” when he announced, “Bring them on.”¹² Through such presidential performances, American citizens are invited to enjoy the spectacle of the nation itself as alpha male, the country with the biggest stick. Meanwhile, Ehrenreich notes, for citizens who prefer the older, more genteel form of manliness (perhaps as represented by George W. Bush’s father), the United

⁸See generally CYNTHIA ENLOE, *MANEUVERS: THE INTERNATIONAL POLITICS OF MILITARIZING WOMEN’S LIVES* (2000); CYNTHIA ENLOE, *BANANAS, BEACHES, AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* (1990).

⁹See generally Madeline Morris, *By Force of Arms: Rape, War, and Military Culture*, 45 DUKE L.J. 651 (1996); Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499 (1991).

¹⁰See Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 781-788 (2000).

¹¹See GAIL BEDERMAN, *MANLINESS AND CIVILIZATION: A CULTURAL HISTORY OF GENDER AND RACE IN THE UNITED STATES, 1880-1917* 11-23 (1995). Kenneth Karst points out that serving in the military is also a key site for earning national citizenship, which itself has traditionally been associated with the privileges and obligations of masculinity. See generally Karst, *supra* note 9.

¹²On July 2, 2003, speaking to reporters about the rising casualties associated with the American occupation of Iraq, President George W. Bush said, “There are some who feel like that conditions are such that they can attack us there. My answer is: Bring them on. We have the force necessary to deal with the situation.” See <http://www.reuters.com> (July 2, 2003).

States Government also invites us to experience manliness through the racialized performance of the civilizing mission.

After September 11, 2001, several commentators (including Osama bin Laden) eagerly took the occasion to describe our global predicament as a “clash of civilizations.”¹³ “Civilization,” of course, is a word richly loaded with racial connotations. As historian Gail Bederman observes, “[I]n . . . the late nineteenth-century’s popularized Darwinism, civilization was seen as an explicitly racial concept. . . . Human races were assumed to evolve from simple savagery, through violent barbarism, to advanced and valuable civilization. But only white races had, as yet, evolved to the civilized stage.”¹⁴ The “civilizing mission” of the Western nations sometimes understood as bringing light to the African “heart of darkness” or to the barbaric “Oriental” nations is a classic racial narrative, in which soldiers, colonial settlers, and missionaries perform the familiar role of shouldering the “white man’s burden.”¹⁵

In these and other ways, the present “war on terror” invites soldiers and citizens to perform their identities according to highly gendered and racialized scripts, whether on their own behalf¹⁶ or on behalf of the nation itself, imagined as a wise father bringing freedom and democracy to nations that cry out for our help, as a masculine bad-ass ready to “kick butt” on behalf of that freedom and democracy (think about the bumper stickers that declare, “These Colors Don’t Run”), or as a white colonial administrator undertaking the burden of teaching brown Iraqis to govern themselves.

¹³Samuel P. Huntington, *The Clash of Civilizations? The Debate*, FOREIGN AFFAIRS, Summer 1993. The popularity of the phrase stems from an 1993 article published in *Foreign Affairs* by Samuel Huntington, later expanded into a book, which sought to explain the global political future in terms of clashes among seven or eight civilizations: “Western, Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox, Latin American and possibly African civilization.” (Huntington seems uncertain whether Africans possess a civilization.); SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

¹⁴Gail Bederman, *supra* note 11, at 25.

¹⁵RUDYARD KIPLING, “The White Man’s Burden,” *MCCLURE’S MAGAZINE* 12 (Feb. 1899). The ur-text of the white man’s burden is, of course, Rudyard Kipling’s poem, “The White Man’s Burden,” published in 1899 as the United States pursued imperialist goals in the Philippines following the Spanish-American War. The poem famously begins:

Take up the White Man’s burden—
 Send forth the best ye breed—
 Go, bind your sons to exile
 To serve your captives’ need;
 To wait, in heavy harness,
 On fluttered folk and wild—
 Your new-caught sullen peoples,
 Half devil and half child.

Id. See also, Sherene Razack, “Outwhiting the White Guys:” *Men of Colour and Peacekeeping Violence*, 71 *UMKC L. REV.* 331 (2002) (exploring the particular dilemmas of soldiers of color in a colonial situation in her work on peacekeepers in Somalia).

¹⁶For a brilliant exploration of how the convergence between nation, masculinity, and race has inspired hate crimes against people perceived as “Middle Eastern” or “Muslim” since September 11, 2001, see Leti Volpp, *The Citizen and the Terrorist*, 49 *UCLA L. REV.* 1575 (2002).

The state's organized violence is legitimated in similarly gendered and racial terms when exercised on behalf of domestic "security."¹⁷ Nicholas Espiritu's essay, *(E)racing Youth: The Racialized Construction of California's Proposition 21 and the Development of Alternate Contestations*, interprets California's Gang Violence and Juvenile Crime Prevention Act as an exercise in the politics of race. This politics, as he notes, has played out in California in the debate surrounding a number of state initiatives, including Proposition 14 (repealing California's Fair Housing Act), Proposition 187 (which attempted to limit the services and benefits available to undocumented persons), Proposition 209 (which prohibited race consciousness in public education and employment), and Proposition 227 (which aimed to end bilingual education in the state).

Much of the racial animus successfully mobilized by proponents of these state initiatives had to do with the desire to protect a nation imagined as white and English-speaking from the threat of brown, Spanish-speaking others flowing across the southern border. California stood in for the nation in this debate, and citizens were encouraged to identify with a nation under siege and perform a story of racial exclusion and purity: the nativist corollary to the story of the civilizing mission. Proposition 21 intertwines this racialized narrative with another, familiar narrative in which criminals are black or brown and victims are white. The latter narrative became a staple of conservative politics with the emergence of the Republican Party's "Southern Strategy," which used "crime" as a code word for "race."¹⁸ Beginning with Ronald Reagan's presidency and the unveiling of another, domestic "war"—the so-called "war on drugs" the racialization of criminal justice became material as well as symbolic.¹⁹ Today, thanks to the war, lower-class African American and Latino/a people are vastly disproportionately represented in American jails and prisons.²⁰

Gendered performances structure the symbolic politics of crime as well. For instance, the linguist George Lakoff argues that a dominant cultural metaphor of the nation is as a family with a father at its head—for conservatives, a stern patriarch; for liberals, a wise and gentle one.²¹ Elaborating on this metaphor, Jonathan Simon

¹⁷For an extensive examination of the racing and gendering of crime and criminal justice, see Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L.REV. 777 (2000).

¹⁸See generally THOMAS BYRNE EDSALL & MARY D. EDSALL, CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS 40 (1991) (discussing the presidential campaign of Barry Goldwater in 1964 as a pivotal moment in the emergence of this political strategy).

¹⁹See generally MICHAEL TONRY, MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA (1995).

²⁰As Kevin Johnson notes, today African Americans constitute more than fifty percent of the population of prisons and jails in the United States, despite constituting only twelve percent of the population; Latino/as make up one-third of the prison populations in California and New York, despite constituting only twenty-seven and thirteen percent of the population, respectively. See generally Kevin R. Johnson, *Latinas/os and the Political Process: The Need for Critical Inquiry*, 81 OR. L. REV. 917 (2002).

²¹See generally GEORGE LAKOFF, MORAL POLITICS: WHAT CONSERVATIVES KNOW THAT LIBERALS DON'T (1996).

argues that crime, understood as a threat to the American national family, has become a key site for constructing national governance:

First, it exemplifies the disciplinary father's fundamental claim to power and the necessity of reproducing it even with violence. Without his coercive capacity, the stern father as leader implies that the inherently sinful pull of undisciplined human nature will lead the weaker members of the family/nation into crime and violence of their own more vulnerable parts (children, women, minorities, the poor). Not surprisingly, conservatives have offered the punishment of crime as the main form of domestic government and made their promise to punish crime their prime appeal.

Second, the substantive rules of criminal law (at least those noticed by popular culture) exemplify the simple commands that form the disciplinary father's preferred technology of power. The strict father speaks in the language of rules backed by the threat of punishment.²²

As Espiritu notes, although the juvenile justice system originally allowed the state to act as *parens patriae* with respect to children who committed crimes, the performance of government as father and delinquents as children is disrupted when the offenders in question are black and brown. These children are not viewed as belonging to the nation (or even as children), but rather as threats to the nation's existence. As a result, the political gender performances that might have resulted in more protective (if no less disciplinary) treatment are supplanted by political performances of "toughness on crime" that demand more and more punitive punishment.²³

At the end of his essay, Espiritu calls for an antisubordination politics to challenge these familiar performances of racism, xenophobia and patriarchy. Anita Tijerina Revilla and Marta Núñez Sarmiento offer some hopeful stories from the front in the development of such a politics. In *Changes in Gender Ideology Among Professional Women and Men in Cuba Today*, Sarmiento presents the result of her interviews with 30 professional women and men living in Havana. Asked to reflect on four topics: attitudes at their jobs, willingness to become managers, influence of women's employment at home and in intimate relationships, and whether men blame women for problems at work and at home, Sarmiento's informants indicate that, although Cuban women still bear the burden of the "double shift" (being held responsible for the home as well as for outside work), they are nevertheless changing their gender performances and calling for others to change as well. Sarmiento acknowledges, for example, that women are still underrepresented as managers in Cuba, but she argues that the conditions are now in place for this to change. She also

²²Jonathan Simon, *Governing Through Crime Metaphors*, 67 *BROOK. L. REV.* 1035, 1037-38 (2002).

²³For interesting observations about how children figure in cultural politics (frequently, as the center around which moral panics are organized), see Kenneth L. Karst, *Law, Cultural Conflict, and the Socialization of Children*, 91 *CAL. L. REV.* 967, 1020-1025 (2003). Karst concludes, "For the operative who would mobilize a constituency and keep it mobilized, . . . the chance to focus on children will come as political manna from heaven." *Id.* at 1025.

finds that it is women, rather than men, who are the vanguard in transforming the traditional performance of “woman-mother” from a person who lacks leadership capacity to a person who can make major decisions. Finally, Sarmiento explicitly connects this transformation to national goals and Cuba’s stated desire to eliminate gender bias. The Havana women who are rewriting the scripts for what it means to be female are, therefore, also rewriting the scripts for what it means to be Cuban.

Returning to the United States, Anita Tijerina Revilla examines Raza Womyn, a Chicana/Latina student organization at UCLA “dedicated to the empowerment, liberation and education of all *mujeres*.” Drawn to and inspired by this group’s ability to connect race, class, gender, and sexuality in a progressive politics of revolution, Revilla followed the group for three and a half years. Her essay, *Raza Womyn Engaged in Love and Revolution: Chicana Student Activists Creating Safe Spaces Within the University*, presents a *testimonio*, the story of one Chicana student whom Revilla names “Carmen.” Carmen learns through her struggles in Raza Womyn the hard lesson that even in a “safe space” of people who believe themselves to be progressive and enlightened, critical consciousness is a never-ending process of self-education. Her story, moreover, ends on an intriguing note. Carmen moves to San Jose with her lover and becomes a union organizer for the SEIU, and begins to fuse these sides of her life by talking about revolution in the language of love. As Revilla quotes Carmen:

I’ve been feeling this thing about love and revolution. I really feel that these two things really have to come together in order for there to be a revolution, there must be love. And that love can be for . . . first of all, it must be for yourself because you can’t love anyone else until you love yourself. And then you extend that to love the painful parts about your culture, not to excuse them, but to love the parts about you that includes your culture, your family, that includes the fucked up people in your life, and loving the people who are around you and accepting people for where they’re at. And I don’t think you can accept other people unless you love. As an extension of that, then you are able to revolutionize. And I think if you love, then you’re more open to revolutionize what you already think and revolutionizing other people’s minds. And if you love and you can demonstrate that you love, then how can people be closed to you or to allowing their lives and thinking to be revolutionized?²⁴

The metaphor of “architecture” imagines subordination as a thing made of bricks and mortar; the metaphor of “performance” imagines it as a stage play with a cast of thousands. The introduction of love unsettles both these metaphors. It serves, however, to suggest what is at stake in the business of transforming the nexus between power and identity. The juxtaposition of revolution and love implies that what motivates anti-subordination theorists and activists is, at least in part, a desire for others to flourish. It also implies that love is more than a feeling: that love can be unsettling, can call into question identity performances as well as confirm them, and can involve challenge and struggle.

²⁴Anita Tijerina Revilla, *Raza Womyn Engaged in Love and Revolution: Chicana Student Activists Creating Safe Spaces Within the University*, 52 CLEV. ST. L. REV. 155 (2005).

All of the essays in this Cluster, then, address the problem Imani Perry identifies as the need for a complex and nuanced language of subordination. Indeed, read together they begin to call that language into being. As complex as subordination is, certainly one metaphor or one concept will not suffice to capture it. These essays suggest that the way to make the interconnections visible is through the details of theoretical inquiry. For us as lawyers, however, the question remains open whether the courts can be taught to move beyond the jurisprudence of categories.